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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Butte)**

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THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM FRANKLIN VEAVER,

Defendant and Appellant.

C084121, C086270

(Super. Ct. No. CM027627)

Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, appointed counsel for defendant William Franklin Veaver has asked us to review the record for arguable issues in defendant's appeals from the denial of his motion to vacate judgment pursuant to Penal Code section 1473.7,<sup>1</sup> which allows a noncustodial defendant to move to vacate a

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

judgment of conviction due to prejudicial error damaging the moving party's ability to meaningfully understand adverse immigration consequences and if newly discovered evidence of actual innocence exists (appeal No. C086270), and from the denial of his motion for release of client files from his defense counsel in the underlying criminal action (appeal No. C084121).<sup>2</sup> Because we find that defendant is not entitled to *Wende* review, we dismiss the appeal as abandoned.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### ***Butte County Case No. CM027627***

A January 2008 information charged defendant with multiple sexual offenses<sup>3</sup> against his wife and alleged that he had a strike prior and prior serious felony conviction. (§§ 1170.12, subds. (a)-(d), 667, subds. (a)(1), (b)-(i).) After the information was amended to add a charge of sexual battery (§ 243.4, subd. (a)), defendant pleaded no contest to the sexual battery offense pursuant to a negotiated disposition.<sup>4</sup> The remaining counts and allegations were dismissed with a *Harvey*<sup>5</sup> waiver. In September 2008, after denying probation, the court sentenced defendant to the midterm of three years in state prison. He was released on parole in 2009.

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<sup>2</sup> The appeals were consolidated on April 6, 2018.

<sup>3</sup> Defendant was charged with spousal rape (§ 262, subd. (a)(1)), forcible oral copulation (§ 288a, subd. (c)(2)), sexual penetration by a foreign object (§ 289, subd. (a)(1)), and attempted sodomy by use of force (§ 664/286, subd. (c)(2)).

<sup>4</sup> The factual basis of the plea was based on Chico Police Department Report No. 07-10082 and the probation report. Defendant admitted that on or about November 26, 2007, he “touch[ed] [D.C.] on an intimate portion of her body, skin to skin, without her consent.”

<sup>5</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

***Appeal No. C084121***

In February 2013, defendant began repeatedly requesting material from the files of his criminal defense counsel, Eric R. Ortner, who represented him on his plea to the spousal battery offense in Butte County case No. CM027627. On February 19, 2013, Attorney Ortner filed a motion for an “order releasing attorney’s file to defendant” (uppercase omitted).

In March 2013, Attorney Ortner submitted the contents of this file to the trial court for an in camera review. The trial court indicated it would review the file in camera and “allow disclosure of anything to be provided to the defendant” (uppercase omitted).

The next month, in April 2013, the trial court filed an order stating that it had conducted an in camera review of Attorney Ortner’s client file in defendant’s case. The court ruled that there was no additional material in the file other than what Ortner had already given defendant. The court ordered that Ortner was not to disclose any additional materials in the client file without further order of the court.

On December 2, 2016, defendant filed another “M[otion for] Order Releasing Client[’]s File to Client.” As support for his motion, defendant cited cases discussing an attorney’s duty to give all materials in a client’s file to the client, as well as an attorney’s obligation to avoid prejudicing a client’s case in any way. Defendant complained that Attorney Ortner had earlier filed the motion for an order to release the client files, which the court had denied, claiming this constituted an adverse ruling against Ortner’s client (defendant). Defendant attached a declaration from an inmate who assisted him with the motion, which claimed he instructed defendant to seek postconviction relief.

The motion was heard on January 12, 2017. Finding that the court had previously denied the same motion in 2013, the court denied defendant’s renewed motion for release of the client’s files. Defendant objected on the record and informed the court that he

intended to appeal the ruling. Defendant timely appealed, and the trial court denied his request for a certificate of probable cause.

***Appeal No. C086270***

In November 2017, defendant filed a motion to vacate the judgment in the spousal battery case under section 1473.7.<sup>6</sup> Defendant alleged that the conviction or sentence was legally invalid due to prejudicial error damaging his ability to meaningfully understand, or knowingly accept the actual or potential adverse consequences of his no contest plea. He also claimed that evidence of his actual innocence of the charge existed requiring vacation of the conviction and sentence. He detailed purported misconduct of the individual police officers involved in the case as well as alleged misconduct by the prosecutor and defense counsel Ortner.

Nearly two weeks later, on November 28, 2017, defendant filed an amended motion to vacate judgment pursuant to section 1473.7. The People opposed the motion, arguing that defendant failed to establish that he was unable to understand or defend against adverse *immigration* consequences, which section 1473.7 required, and that he failed to present facts to support a finding of newly discovered evidence within the meaning of the statute.

The court heard the amended motion to vacate in December 2017, and denied the motion. Defendant appealed.

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<sup>6</sup> Defendant filed a similar motion in April 2013, which the court denied. Defendant appealed the denial, and this court dismissed the appeal as abandoned after finding that defendant was not entitled to *Wende* review of the motion to vacate the judgment under section 1473.6. (See *People v. Veaver* (May 14, 2014, C073979) [nonpub. opn.].)

## DISCUSSION

Review pursuant to *Wende* or its federal constitutional counterpart *Anders v. California* (1967) 386 U.S. 738 [18 L.Ed.2d 493] is required only in the first appeal of right from a criminal conviction. (*Pennsylvania v. Finley* (1987) 481 U.S. 551, 555 [95 L.Ed.2d 539, 545-546]; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529, 536-537 (*Ben C.*); *People v. Serrano* (2012) 211 Cal.App.4th 496, 500-501 (*Serrano*).)

The right to *Anders/Wende* review applies only at appellate proceedings where defendant has a previously established constitutional right to counsel. (*Serrano, supra*, 211 Cal.App.4th at p. 500; *Ben C., supra*, 40 Cal.4th at pp. 536-537.) The constitutional right to counsel extends to the first appeal of right, and no further. (*Serrano*, at pp. 500-501.) While a criminal defendant has a right to appointed counsel in an appeal from an order after judgment affecting his substantial rights (§§ 1237, 1240, subd. (a); Gov. Code, § 15421, subd. (c)), that right is statutory, not constitutional. Thus, defendant is not entitled to *Wende* review in such an appeal. (See *Serrano*, at p. 501 [no *Wende* review for denial of postconviction motion to vacate guilty plea pursuant to section 1016.5].)

The appeal before us, “although originating in a criminal context, is not a first appeal of right from a criminal prosecution, because it is not an appeal from the judgment of conviction.” (*Serrano, supra*, 211 Cal.App.4th at p. 501.) Applying *Serrano* here, defendant has no right to a *Wende* review of the denial of his motion to vacate the judgment pursuant to section 1473.7 or to the denial of his motion for client files. Because neither defendant nor his counsel raises any claim of error in the criminal conviction, we must dismiss defendant’s appeal as abandoned.

## **DISPOSITION**

The appeal is dismissed.

BUTZ, Acting P. J.

We concur:

MURRAY, J.

HOCH, J.